IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/06/2003

CORAM

THE HON'BLE MR. JUSTICE P. SHANMUGAM
and
THE HON'BLE MR. JUSTICE S.K. KRISHNAN

Writ Appeal No.642 of 2002

Christian Medical College & Hospital,
Ida Scudder Road,
Vellore, rep. by its
Council Secretary. .. Appellants

-Vs-

1. The Presiding Officer,
Industrial Tribunal,
Madras.

2. The Secretary,
CMC Hospital & Employees Union,
2/B, Yedhava Street,
Sankaranpalayam,
Vellore. .. Respondents

PRAYER : Appeal against the order dated 31.1.2002 passed by a learned single Judge of this Court in Writ Petition No.1624 of 1994.

!For Appellants : Mr. Sanjay Mohan for
M/s. S. Ramasubramaniam Associates

^For Respondents : Mr. V. Selvaraj (For R-2)

:J U D G M E N T

P.SHANMUGAM, J.

Respondent in the claim petition and petitioner in the writ petition, aggrieved by the confirming orders, has preferred the above writ appeal.

2. The facts leading to the case are stated below :-
The Christian Medical College and Hospital Employees' Union raised Industrial Dispute No.90 of 1989 before the Industrial Tribunal in reference to payment of bonus and enhancement of pay scales. The Government of Tamil Nadu, as per G.O. No.1672 dated 8.9.1989, made the following

reference to the Industrial Tribunal, Chennai :

(1) Whether the demand for payment of bonus to the workers at 8.33% for the year 1986-87 is justified, and if not, to what relief they are entitled ?
(2) Whether the demand for enhancement of pay scales to the workers by 20% over the present pay scales is justified ? and if so, to fix the pay scales and the dates from which the revised pay scales should be given effect to.

The Management of Christian Medical College and Hospital raised an objection dated 9.1.1990 as to the applicability of the Payment of Bonus Act and prayed for a decision as a preliminary issue. The Industrial Tribunal, by an order dated 23.12.1993, over ruled the preliminary objection and posted the Industrial Dispute for enquiry on merits. Aggrieved by this order, Writ Petition No.1624 of 1994 was preferred by the Management. By an order dated 31.1.2002, the writ petition was allowed in part insofar as it related to the Christian Medical College, but it was dismissed insofar as it related to the Christian Medical College and Hospital. The present writ appeal is against this order.

3. In the present writ appeal, we are concerned only with the claim of bonus. The following questions arise for consideration in this appeal :

(1) Whether the Management of the Hospital is an educational institution and therefore, whether the provisions of the Payment of Bonus Act, 1965 are applicable ?
(2) Whether the Hospital is exempted from the application of Section 35(5)(c) of the Payment of Bonus Act ?

4. Whether the Christian Medical College and Hospital is an Educational Institution ?
Looking at the history of the appellants' institution, it could be seen that Dr. Ida Soudder, a grand daughter of the First American Medical Missionary in India, realizing that the basic need in India was women doctors as custom did not allow women to be treated by men and to relieve the suffering of women in particular, started a one-bed clinic in 1900 and set up a hospital with 40 beds within two years with a group of medical women. But, her main desire was to train women doctors who would go out to serve suffering women and children. Thus, training courses for nurses and a medical school for women came into being. The hospital and the medical school were growing and the medical school became a medical college with degree courses in 1942. The historic change came in the year 1947 when men also were admitted to the medical college in response to the national need. The educational programmes of the college and the services of the main and branch hospitals have also expanded steadily.

5. The Christian Medical College Vellore Association has been formed for running and administering a Medical College and a College of Nursing in Vellore, both of which are affiliated to the University of Madras.

Besides the Graduate Medical Course leading to M.B.B.S. Degree, they conduct Diploma, Post-Graduate Diploma and Post-Graduate Degree Courses in various specialties.

6. The college is situated about four miles away from the main hospital in a 186.75 acres area. The hospital is situated in the town of Vellore on 32.93 acres area. The non-clinical departments of Anatomy, Physiology, Bio-Chemistry and Pharmacology as well as departments of Community Health, Psychiatry, Rehabilitation Institutions and Rural Hospital are situated in the college campus, while other departments are situated in the hospital. The Medical Council of India has issued regulations relating to the standard requirements for a medical college for 100 admissions annually. For the medical college, the number of beds required according to the counter statement is 700 , whereas, the number of beds available in the institution as on date is 1484.

7. The Christian Medical College Vellore Association is a Society registered under Act XXI of 1860 on 13.9.1947.

"The Object of the Association is the establishment, maintenance and development of a Christian Medical College and hospitals in India where women and men shall receive an education of the highest grade in the art and science of Medicine and Nursing or in one or other of the related professions to equip them, in the spirit of Christ for service in the relief of suffering and the promotion of health."

The membership to the Association is restricted to a Christian Church or Group of Churches in India conducting medical work. The Christian Medical College, Vellore was affiliated and recognized by the University of Madras from its inception and now it is affiliated with the Tamil Nadu Dr. M.G.R. Medical University. Though initially the institution began with a two-bed clinic, now they have an Eye Hospital, Mental Health Centre, Rural Health Centre, besides having 1484 beds in the main hospital. They also have got their own pharmacies for manufacturing drugs and dispensing medicines. As per the instructions of the University of Madras, the number of beds available to students admitted annually to the college should not fall below the ratio 5:1 in reference to final M.B.B.S. and degree examination. M.W.1, Dr. V.I. Mathan, has stated before the Tribunal that each Medical student, during the period of clinical posting, should be in sole charge of not less than five beds continuously. As per the University and statutory requirement for training medical and nursing students and for students of allied health sciences in the college, they must have a teaching hospital. But, in the course of its development, the hospital has grown over many times than the minimum requirement, as could be evident from its income and expenditure. Though the exact number of students admitted and the requirement is not set out, there is no serious dispute as to the fact that the hospital has grown over many times than the minimum requirement for a teaching hospital. In other words, though initially the Association started with a clinic with about 40 beds, it has since grown into a hospital with 1484 beds, catering different faculties and having groups of hospitals offering special care and super care treatments. From the evidence, the records and the arguments, one can have no

doubt as to the fact that the hospital cannot now exclusively be treated as an educational institution. The object of the Association itself is not only for establishment, maintenance and development of the medical college, but also the hospitals in India. Factually speaking, the Christian Medical College and Hospital is a referral hospital serving various organizations, corporate bodies and patients from all over India. The main or the dominant activity of the Society is providing treatment to the patients and teaching has now become subsidiary. Considering the number of departments in the hospital, the strength of staff, the number of inpatients and out-patients treated in the hospital, the income and expenditure of the hospital and in the light of the principle laid down by the decisions referred to below, the only conclusion possible is that the appellant is not an educational institution. Therefore on facts, it cannot now be stated that the Christian Medical College and Hospital is part of the college and that it is an educational institution.

8. Whether the Christian Medical College and Hospital is a nonprofit making institution ?
It is admitted by the Management that the hospital provides free care to 40% of its out-patients and 10% of its in-patients every year. It is also admitted that the appellants are running the institution on commercial lines, which means that a professional and business like approach is adopted in running the appellants' college and hospital. The cost of education for a single Medical student per year for the year 1991 was estimated to have been at Rs.64,000/-, whereas the fee that was charged by the appellants for each student was only Rs.3,000/- per year. This follows that only from the earnings of the hospital, the Management is able to provide subsidy to the students for their education. From the Minutes of the Extraordinary Meeting of the Association held in the year 1987, the income from patients during 1 978-88 is shown to be 88%, whereas the contribution from the Members was only 1.42%, the amounts collected from the students amounted to 1 .5%, from other sources it was 2.5%, and from the division of community health it was 3.4%. The same was the position for the year 1983-8 4. It is stated by the Management that of the 1484 beds, only 161 beds are meant for free treatment, i.e. merely 11% of the beds are intended for free treatment.

9. As per the evidence let in by the Management, the income and expenditure statement for five years from 1987 to 1991 is as follows :-

Year	Income (in lakhs)	Expenditure (in lakhs)	Deficit (in lakhs)	Quantum of free treatment (in lakhs)
1987	1165.98	1169.84	3.80	114.07
1988	1338.37	1342.01	3.60	142.42
1989 (9 months)	1140.03	1140.83	0.80	120.59

1990 1904.00 1906.75 2.75 193.04

1991 2187.92 2218.07 20.15 205.85

7736.30 7777.50 41.20 795.97
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10. It is admitted in the affidavit filed in support of the writ petition that while it is true that medicines are dispensed only to the patients of the hospital, whatever income is generated from such dispensing of medicines is ploughed back into the resources of the institution for the purpose of carrying out various educational functions and providing benefits to the deserving. It is further admitted that the hospital enjoys the benefit of Section 80-G of the Income Tax Act as well as Section 10(22), besides substantial exemption from customs duty, etc. on import of medical equipment and supplies, all of which clearly show that there is recognition by the State that the institution is a charitable institution. According to them, the fact that charges are levied for the treatments given in the hospital is of no consequence and even making a profit was irrelevant as it is only the object that is relevant.

11. In the counter affidavit, it is submitted that the dominant activity of the Society is running the hospital and not the medical college for the following reasons :

(1) The number of beds available in the hospital is double the minimum number of beds required for administering a medical college.
(2) Without the medical college, the hospital could survive, but without the hospital, it is impossible to run the medical college.
(3) It is admitted that from the income of the hospital, a sum of Rs.61,000/- was given to each student as subsidy during the year 1991. At that time, there were 400 students and thus, the total expenditure incurred in this regard worked out approximately to Rs.2.5 crores per year.
(4) Ex.W.5 would show that during the year 1987-88, the income from patients and others was 94.5% and the contribution from the Council Members was only 1.4%.
(5) The institution is manufacturing 144 items of medicines and sells them for profit.
(6) The hospital offers consultancy services to smaller hospitals on profit basis.
(7) The hospital earns interest on investments.
(8) The hospital gives treatment to persons referred by various Governmental and industrial establishments as set out in Ex.W.11.
(9) Out of the 1484 beds, only 161 beds are meant for free treatment, which works out to 10.8%.
(10) The hospital is not meant entirely for charitable purposes.

12. The Management manufactures 144 items of medicines and sells them to patients at rates higher than the market price. Treatment is also given on credit basis and they collect 18% interest on delayed payments. The

finding of the Tribunal on this aspect is as follows :

"Hence, it is obvious that it is only from
the income of the hospital that the college is
being maintained."

It is admitted by the Management in their counter statement that while it is true that medicines are sold only to their patients, whatever income is generated from such sales is ploughed back into the resources of the institution for carrying out the various functions to the deserving. It is admitted by M.W.1 that a large number of patients visit their hospital from all over India. A significant proportion of the patients (about 25% of the in-patients) belong to various Governmental organizations or private companies which undertake to pay for the medical expenses of their employees. The hospital has definite arrangements with such Governmental and other organizations for credit billing facility for the convenience of the patients. In a similar way, several smaller hospitals consult their institution on difficult medical problems and a consultant's opinion is given by the appropriate faculty of their teaching hospital, for which a charge is levied. The institution being a Registered Society, it cannot distribute its profits and as rightly admitted, the surplus is being ploughed back to the institution itself. At the same time, from the admitted evidence, it is clear that the income from the hospital ranges from 88% to 90% of the total income of the institution. Only 40% of the total number of patients (out of them, only 10% being in-patients) are given free treatment. Therefore, the subsidy given to the students of the Medical College and the cost of free treatment given to the outpatients as well as the in-patients has to come from the surplus income of the hospital. There is no way for the Management to say that they are not making profit. Admittedly, the institution is run on a commercial, professional basis and therefore, the hospital cannot be termed as an institution established not for the purpose of profit.

13. When 90% of the in-patients and 60% of the out-patients are charged on a commercial basis and the hospital manufactures 144 items of medicines and sells them to its patients on higher price for profit and the surplus from the sales is ploughed back to the very institution and the substantial expenditure for the students is subsidized and when 90% of the income of the institution comes from the hospital, it is beyond any doubt that the institution is a hospital making profit. As pointed out, a vast majority of the workers are employed in the hospital and they contribute for 90% of the income for the institution. Their contribution of labour is also part of the income, which turns out to be 90% to the institution. Further, the subsidized education to medical students and the treatment given to patients of the hospital is, therefore, given at the cost of the labour of the workers also. Since the Central Government provides exemption to the hospital from customs duty, excise duty and income tax as also other such benefits, the hospital being a charitable institution and as they satisfy the requirement by providing free treatment to 40% of its out-patients and 10% of its in-patients, it does not mean that the workers also should contribute their labour, without any returns, for the purpose of providing subsidy to the students in respect of their education and giving treatment to the patients.

It is true and is admitted that the substantial portion of the income, namely a significant portion of 25% of the income, comes from patients referred by various Governmental and private organizations with reimbursement and credit facility and the hospital offers consultation facility for smaller hospitals, all of which is done at the cost of the labour provided by the respondents/work force. Therefore, we find that the Medical College and Hospital is a separate entity, it cannot be treated as an exclusive educational institution and the hospital is now run on profit.

14. When the hospital is so generous as to allow subsidy to a tune of about Rs.60,000/- for each of its medical student, which works out to Rs.2.5 crores per year, it is somewhat ununderstandable as to why the lowest paid employees working in the hospital should not be provided with bonus at the rate of 8.33%, which may approximately work out to Rs.1,500/- per worker. Bonus is admittedly deferred wages and the lowest paid have to be compensated by way of bonus. The Association is having a hospital with double the number of beds required for an educational institution and 90% of the treatment is done on profit basis. We have seen from the facts and figures that the dominant activity of the Management is not education, but running the hospital and the hospital is also run on profit basis.

15. If the argument of the counsel for the appellants is to be accepted, then any management of an educational institution would start a hospital and claim that it is an educational institution since they cater to the needs of the students of that institution, especially in the light of the recent trend of big hospitals having their own educational set up for running Nursing and Physiotherapy Courses as well as Paramedical Courses like Bio-Chemistry, Laboratory Technician and Instrumentation, etc. The students who are admitted to these institutions are drawn for the service of the hospital for a fixed number of years and thus, both the students and the hospitals are benefited. However, the hospitals are run on commercial and professional lines. If the contention of the appellants is to be accepted, then big hospitals, having their own in-built educational arrangements like Paramedical, Nursing, etc. will have to be declared as educational institutions.

15A. The purpose of establishment and the object of the institution being to serve the poor and impart education on Medicine would not mean that the same object continues even today. Though it began as a primary medical educational institution, now it has become a premier hospital. Education is no longer their dominant activity. The object of providing free service to the poor on charitable lines is now no longer available to all the patients and it is admitted by the appellants themselves.

16. The argument of the appellants that the fact that treatments offered in the hospital are charged is of no consequence and that even making profit is irrelevant and that it is only the object that is relevant has got its own in-built fallacy in it. What is required as per Section 35(5)(c) of the Payment of Bonus Act is that an institution as on date should be run not for the purpose of profit. Even though the institution was established in the year 1900 with a one-bed hospital with no idea of making any profit

whatsoever, it does not mean that the same object continues even today. This provision has to be interpreted taking into account the reality and not the theoretical framework. The argument that charging the patients and making profits is irrelevant and that the object originally conceived alone is relevant seems to be unacceptable. The court has jurisdiction to go into the nature and content of the claim and is not bound by their stated objects. There is a sea change in the teaching and charitable treatment conceived in the beginning of the 20th century than what it is today. For the reasons discussed above, if we look at the factual position of the hospital and the educational institution, no other conclusion is possible except to say that the hospital has grown out of its original concept of serving as the educational institution. The dominant activity of the Society now is to run the hospital on commercial lines and the education aspect has now become secondary. Therefore, the educational institution, namely the medical college, has rightly been treated as a separate unit by the learned single Judge and the hospital with a separate entity. Insofar as the hospital is concerned, considering the admitted position of the factual figures, like the number of beds available for free treatment for its out-patients etc., it is abundantly clear that the hospital is making profit.

17. The various decisions cited by the learned counsel can be looked into at this stage. In the recent judgment in T.M.A. Pai Foundation vs. State of Karnataka [2002 A.I.R. (S.C.W.) 4957], the eleven Judges' Bench of the Supreme Court has approved the view taken by the Supreme Court in St. Stephen's College vs. University of Delhi (A.I.R. 19 92 S.C. 1630) that minority institutions cannot claim immunity against the general pattern and standards of education or as against the general laws such as the laws relating to law and order, health, hygeine, labour relations, social welfare legislations, contracts, torts, etc. Their lordships agreed with the contention of the learned Solicitor General that the Constitution, in Part-III, does not contain or give any absolute right. All rights conferred in Part-III of the Constitution are subject to the other provisions of the said part. General laws of the land applicable to all persons have been held to be applicable to minority institutions also, like for example, the laws relating to taxation, economic relations, public order and morality. Even though the above ruling in the Constitution Bench judgment refers to the rights of the minority educational institutions, the

Management of the hospital in this case initially have claimed the same rights and the non-applicability of Industrial Disputes Act against them, which has been negatived.

18. In Bangalore Water Supply and Sewerage Board vs. A. Rajappa [197 8 (1) L.L.J. 349], though the hospital concerned was being run by the Government for providing medical relief to the people and substantial education and training were also given, yet it was held by their lordships that it was an industry. Their lordships observed as follows :
"Medical education, without mincing words, is industry. It has no vulgarizing import at all since the term 'industry' is a technical one for the purpose of the Act. Even as a masterpiece of painting is priceless art, but

is within 'good' under the sales tax law without any philistanic import."

Their lordships further held that the University of Delhi's case was wrongly decided and that education can be and is, in its institutional form, an industry. Ultimately, their lordships have held as follows :
"We have adduced enough reasons in the various portions of this judgment with regard to hospitals, research institutions and training centres rendering valuable material services to the community, qualifying for coming within Section 2(j) of the Act."

19. A Constitution Bench of the Supreme Court, in Jalan Trading Company vs. Mill Mazdoor Union [1966 (II) L.L.J. 546], while considering the vires of the Payment of Bonus Act, including Section 32, laid down the law on the following lines :

"It may be broadly stated that bonus, which was originally a voluntary payment, out of profits made, to workmen to keep them contented, acquired the character, under the bonus formula, of a right to share in the surplus profits, and enforceable through the machinery of the Industrial Disputes Act. Under the Payment of Bonus Act, liability to pay bonus has become a statutory obligation imposed upon employers covered by the Act...."

20. In The Workmen of Tirumala Tirupati Dewasthanam vs. Management [1980 (1) M.L.J. 211], the Supreme Court, while dealing with the Payment of Bonus Act, has held that the facts that the profits made by the transport department in some years are ploughed back and that the motive for running the industry of transport was to afford special facilities for the pilgrims by themselves do not clinch the issue whether the institution has been established not for the purpose of profit. The Tribunal has to decide whether the Transport Department, having regard to the features of administration, the sources of its finance, the balance sheet that is drawn up and the disposal of the profits, can be considered to be an institution in itself, whether it has nexus with the Dewasthanam or not. The fact that the industry is run by the Dewasthanam, does not keep it out of its being an institution. The expression, "Not for the purposes of profit" has got to be made out on its merits. The institution may be designed for profit although it may make or may not make profit. The institution's profit or earnings may be used for other charitable purposes. That also does not determine finally the character of the institution. Was the institution "not one for purpose of profit", motives apart? If it was one, definitely not for earning profit, but merely as an ancillary facility for pilgrims to reach and return, Section 32(5) will exclude the institution. Their lordships observed as follows :

"If we tersely put it, the dominant
purpose of the Transport Department will
be the decisive factor."

Applying this principle to the case on hand, we have to see as to what is the dominant purpose of the Society and the hospital. It cannot be stated that the hospital in this case is merely an ancillary facility for the medical college and that the hospital is not earning profit.

21. In T.N.W.S. & D. Board vs. T.N.W.S. & D. Board Engineers' Association (A.I.R. 1998 S.C. 1737), the Supreme Court upheld the finding of the High Court that though the Board is established to serve the public interest, it also has its own assets and liabilities and it is an institution designed to earn profit. The further view of the High Court that the Board, in its commercial activities of sort, has got a capital structure of profit, liabilities and labour force to care for was also upheld by the Supreme Court. It is thus a scheme of profit and loss. It shall earn profit in some years and lose in another year. The Supreme Court followed the judgment in Tirumala Tirupati Dewasthanam's case cited above that the Board is an institution designed for profit in the limited sense that when a Government Department found it difficult to run such a department privately, they decided to start such an institution to ensure that there was a proper service to the community on the one hand and on the other hand, to see that there is no pressure on the meager revenue resources of the State.

22. A Division Bench of this Court, in T.N.W.S. & D. Board Engineers' Association vs. State of Tamil Nadu [1991 (II) L.L.J. 394], held that the employees of the Board are entitled to minimum bonus. The Division Bench found as follows :

"We have no manner of doubt that the respondent Board has been established to serve the public interest by ensuring better amenities of life and raising the standard of life of the community as a whole. Learned single Judge has referred to the functions of the Board and its powers and rightly held that the purpose behind the functions of the Board is to provide protected drinking water supply and draining facilities, but this also cannot be disputed that the Board has got its own assets and liabilities, that it has got its own method of recovery of the cost of the schemes, making investment and constituting its funds by 'all monies received by and on behalf of the Board..., all proceeds of land or any other kind of property sold by the Board, all charges, all interest, profits and other money accruing to the board and all monies and receipts', deposited into the public accounts of the Government under such detailed head of accounts as may be prescribed or in the Reserve Bank of India, State Bank of India or any corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. It has thus a scheme of profit and loss. It shall earn profit in some year and loss in another year. Thus, in its commercial activities of a sort, it has got a capital structure, profit and liabilities and a labour force to care for. We see reason to hold in accordance with the rule indicated by the Supreme Court in the case of Workmen T.T. Devasthanams v. Management (supra) that the Board is an institution designed for profit in the limited sense that when the Government's department found it difficult to run such projects departmentally, they decided to create a Board and transferred the projects to ensure that there was proper service to the community at large on the one hand and on the other, there was no pressure on the meagre revenue and other resources of the State."

23. The Division Bench, in the above case, approved the view of the Bombay High Court in Maharashtra State Electricity Board vs. M.C. Chitale [1981 (I) L.L.J. 462] wherein the Bombay High Court dealt with the

question whether the Board was established not for the purpose of profit by looking at the scheme of the Act under which the Electricity Board was constituted and concluded that the primary and dominant purpose of providing for the constitution of such Board was obviously to serve public interest by ensuring better amenities of life and raising the standards of life of the community as a whole. The Division Bench referred, with the approval, their observation as follows :

"Working out such projects on commercial basis is however indispensable as it is necessary to provide for the required current or capital expenses and ensure the stability and the continuity of the project. This cannot be achieved without ensuring surplus of the income over expenses. Whatever the object, such surplus does amount to profit. The element of such profit to a certain extent is inevitably implicit in any commercial and

trading undertaking. That the scale of profit is limited to the purpose is only to work out the scheme effectively does not alter the nature of such surplus or profit."

It was found that the Board was established so that they work out such projects on a commercial basis and invest such profits to further the objects of the creation of the Board. The Board, for this reason alone, cannot be said to be an institution established not for the purpose of profit. Applying the same test approved by the Division Bench of this Court, we find that admittedly the profit earned by the appellants is ploughed back into the resources of the very institution.

24. In a recent judgment of this Court concerning the Christian Medical College itself in Christian Medical College Vellore Association vs. Government of Tamil Nadu (2002 L.L.J. 1646), a Division Bench has taken the view that the hospital in question was open to the public and thousands came to it for medical service. It was truly a teaching hospital and the dominant activity was not imparting education alone. The claim of the Management that the employees were interchangeable between the hospital and the college was held not sustainable as most of the hospital employees such as Staff Nurse, Dietician, etc. could not be transferred to the college. The Division Bench observed as follows :

"The reasoning of the learned single Judge, in our opinion, is quite correct. As already stated, the fact that the University regulations stipulate the inclusion of practical training as part of the educational requirement of medical students does not, in any way, make the Christian Medical College Hospital any less a hospital."

The very same argument putforth before the Division Bench that the predominant function of the institution was to impart medical education and that therefore it cannot be treated as a hospital, was not accepted. Though the Division Bench in that case was concerned with the hospital as a scheduled employment and no exception was made to the teaching hospital attached to the medical college or to any medical institution, the finding is that the dominant activity of the institution is not to impart education alone and that most of the employees cannot be transferred to the college.

25. The main plank of the argument of the counsel for the appellants in this case is that the issue whether the Christian Medical College Vellore Association is an educational institution has already been decided by the Division Bench in Christian Medical College Vellore Association vs. Government of India [1983 (2) L.L.J. 373] and though the judgment was reversed by the Supreme Court in Christian Medical College Hospital Employees' Union vs. Christian Medical College Vellore Association [1988 (1) L.L.J. 263], the finding that the Christian Medical College Hospital is not an educational institution, but is an industry, is binding on the parties.

26. The view of the Division Bench in that case that the medical college attached to the Christian Medical College Hospital is a medical institution was on the basis of the requirement under the Medical Council Act, the regulations made thereunder, the University regulations, the need for an attached teaching hospital, the objectives of the founder and the history of the appellants Association and therefore, it was held that the primary purpose of the attached teaching hospital is teaching and training the medical students. First of all, the Division Bench in the above case did not have the advantage of the facts as revealed before us, namely the dominant activity of the hospital, the growth of the hospital into one having double the minimum requirement and the expanded activity of the hospital, and as on date, it has to be held that the dominant purpose of the Society is not running the medical college, but running the hospital. The Division Bench was of the view that the Christian Medical College Hospital is attached to the Christian Medical College and therefore, it is an educational institution. But, we find that the Christian Medical College Hospital can run independently on its own without the medical college, whereas the medical college cannot be run without the hospital. The medical college hospital has outgrown its initial need of an attached hospital and has now become an independent institution of its own.

27. The above judgment of the Division Bench was reversed by the Supreme Court in Christian Medical Hospital Employees' Union vs. Christian Medical College Vellore Association [1988 (1) L.L.J. 263], the judgment of the Division Bench was found liable to be set aside and the appeal allowed. In the course of that judgment, their lordships of the Supreme Court referred and approved the view of the Supreme Court of the United States on the Fourteenth Amendment to the Constitution of the United States of America which provided that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of his life, liberty or property without due process of law. Due process of law as is now settled in the United States of America will not have the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort or general welfare of the community and this power can neither be abdicated nor bargained away and is inalienable even by express grant; and all contract and property or other vested rights are held subject to its fair exercise. In view of the change in the attitude of the Court laws regulating hours of labour, labour in mines, employment of children in hazardous occupations, payment of wages, minimum wages laws, workmen's compensation laws and collective bargaining have been upheld in recent years even though the right guaranteed by the Fourteenth Amendment had been once construed as an

absolute right not alienable by any consideration of public weal. The principle question raised before the Supreme Court in that case was whether the Industrial Disputes Act is applicable to educational institutions which are protected by Article 30(1) of the Constitution of India. It was answered against the Management holding that even the Managements of minority educational institutions have got to respect the rights under Articles 41, 42 and 43 of the Constitution of India and implement those rights. Implementation of those rights involves obedience to several labour laws including Industrial Disputes Act. Due obedience to labour laws assists the smooth working of the educational institutions and facilitates proper administration of such institutions. If labour laws are not made applicable to minority educational institutions, there is every likelihood of such institutions being subject to maladministration. The disputes will necessarily have to be resolved by providing appropriate machinery for such disputes. Sections 10, 11A, 12 and 33 of the Industrial Disputes Act do not interfere with the right guaranteed under Article 30(1) of the Constitution of India. The decision of the Division Bench reversed by the Supreme Court as referred above revolved around the claim of the Constitutional guarantee of a minority educational institution, whereas the management in this case claims the statutory exemption of an educational institution and the non-profit making nature of the hospital.

28. In Christian Medical College vs. Employees State Insurance Corporation [2001 (1) S.C.C. 256}, it was held that the Equipment Maintenance Department is covered by the term 'factory' under the E.S.I. Act. In that case, the Christian Medical College figured as the appellant and not the Christian Medical College Vellore Association and the claim of the appellant in that case was that the appellant/hospital is part of the medical college and that the hospital has a department which is called Equipment Maintenance Department and that it is part and parcel of the appellant college. The learned single Judge held that the Equipment Maintenance Department was not separate and distinct from the appellant hospital and was just a limb of the hospital and that it could not be separated from the main institution. It was also held that the primary and paramount character of the institution was to teach Medicine to the students and the department was merely maintained for the proper functioning of the main institution and therefore, it could not be considered to be a factory. On appeal, the Division Bench held that the provisions of the E.S.I. Act would apply, following the decision in Andhra University vs. R.P.F. Commissioner of A.P. [1985 (4) S.C.C. 509], wherein it was held that in construing the provisions of the Act, we have to bear in mind that it is a beneficent piece of social welfare legislation aimed at promoting and securing the well-being of the employees and the Court will not adopt a narrow interpretation, which will have the effect of defeating the very object and purpose of the Act. Their lordships held that no question arose of applying the test of dominant nature in that case since that would have become applicable only on the basis of the said department falling within the definition of the term "factory" the respondent had sought to make the appellant hospital also amenable as per the provisions of the E.S.I. Act. In other words, the department did not claim the hospital amenable to the E.S.I. Act. Therefore, the question of dominant nature did not arise for consideration. This question has arisen here because the Christian Medical

College and Hospital has now raised the question whether it is an educational institution and whether the hospital is run not on profit.

29. In C.I.T. vs. A.P.S.R.T.C. [1986 (2) S.C.C. 391], the Supreme Court held that the Road Transport Corporation is entitled to exemption since the activity carried on by it was for a charitable purpose. In that case, the Supreme Court was concerned with the exemption claimed under Sections 11(1) and 12(15) of the Income Tax Act. According to these provisions, the income derived from the property held under the Trust wholly for charitable or religious purpose to the extent to which such income is applied to such purpose in India is held to be for charitable or religious purposes. Charitable purposes have been defined under Clause 15 of Section 12. In that context, their lordships held that if the predominant object is to carry out a charitable purpose and not to earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity. Considering the objects and the purpose of the formation of the Corporation, it was held that it is not established for the purpose of subsidizing the public in matters of transportation of passengers and goods. The Supreme Court outlined the tests, namely what is the predominant object of the activity - whether it is to carry out the charitable purpose or to earn profit. If the predominant object is to carry out a charitable purpose and not to earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity. Applying the above principle to the case on hand, we find that the predominant object of the appellants/Society in this case is not to carry out a charitable purpose, but it is now to run a hospital on a commercial basis and the admitted surplus income over expenses is ploughed back for the benefit of the institution. Therefore, in our view, this judgment would not be of any assistance to the appellants.

30. We have seen from the various decisions involving the appellants themselves that they have raised the claim of minority character against the applicability of the Industrial Disputes Act and that they have claimed that the various departments of the hospital are integrated, indivisible one as against the applicability of the E.S.I. Act. As against the applicability of the Minimum Wages Act, it was claimed that the institution is an educational institution and not a hospital. However, in all these cases, ultimately, it was found that the Industrial Disputes Act is applicable to the educational institutions maintained by the minority institutions, that the E.S.I. Act is applicable to one of the departments of the hospital, that the Minimum Wages Act also is made applicable to the hospital and that the institution is not an educational institution.

31. We are constrained to observe that it is unfortunate that such a reputed Society with a long history should litigate on the issue of grant of bonus to its employees, while it claims its motto as "Not to be ministered unto, but to minister" and the objective of the Christian Medical Association being imparting of education of the highest grade in the Art, Science, Medicine and Nursing or in any one of the other related provisions in order to equip them in the spirit of Christ for the service and the relief of suffering in the promotion of health. In tune with this motto of service, the charity must begin at home. Thousands of last grade employees, who make the educational institution as one of the top ranking institutions and enable the hospital function efficiently toiling day and night, should not have been

driven to litigate against their own management from the year 1988 onwards. When compared to the income of the institution, the amount of the charity offered, the subsidy given to the students from the hospital and the exemption claimed by the institution, payment of bonus to its employees would not be difficult for such a big hospital/ institution. They say that they earn profit for ploughing it back into the resources of the institution. While they take care to equip their infrastructure, machinery, etc., should they not utilise the said profit for the welfare of their employees ? Though we hasten to add that the management is entitled to fight for their legal right, it is seen that the Management is shifting their stand to suit the convenience of the day and is trying to escape even from their legal liability and give the legitimate dues to their employees. At one breath, they say that they are seeking crores of investments for the import of ultra modern equipments and implementing advanced techniques for providing treatment to its patients, on the other hand, they are refusing even to pay the minimum bonus required to their employees. Thus, we find a contradiction in their stand, whatever be the basis for their legal claims.

32. For all the above reasons, the findings of the Tribunal and the modified view of the learned single Judge in the Writ Petition have to be upheld. We accordingly hold that the appellant is not an educational institution coming under Section 32(5)(b) of the Payment of Bonus Act and secondly that the appellant is not a hospital which is run on a non-profit basis and hold the issues against the Management. The writ appeal is dismissed. No costs. Consequently, W.A.M.P. No.14 74 of 2002 is closed.

33. In view of the fact that the Industrial Dispute is pending from the year 1988, we direct the Tribunal to dispose of the main reference within a period of six months from the date of receipt of a copy of this judgment.

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Index : Yes
Internet : Yes

To
The Presiding Officer,
Industrial Tribunal,
Madras.

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